

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 6, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 489, 2/4/2003; HB 496, 2/4/2003;
HB 480, 2/4/2003
Executive Action: HB 448; HB 289; HB 480

HEARING ON HB 489

Sponsor: REP. LARRY LEHMAN, HD 87, Teton/Cascade Counties

Opening Statement by Sponsor:

REP. LEHMAN opened on HB 489. He stated that this bill provides for a continuous payment of district court expenses.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 24}

Proponents' Testimony:

Nancy Sweeney, Clerk District Court, Lewis and Clark County, supported HB 489. She stated this bill addresses inequities created on passage of state assumption of district courts during the past regular session. Section 3-5-901 deals with district court expenses. She stated she participated in all Committee hearings on state assumption. She stated that they did not realize the inequities created by this language until after the legislature concluded. She explained that most expenses, both civil and criminal, are paid out of the clerk of court's, not the district court's, budget. She stated that in Lewis and Clark County, the jury expenses were paid out of the district court budget, so the juror fees will be reimbursed by the State. But her counterpart in Ekalaka paid jury costs out of the clerk of court's budget so Carter County will not be reimbursed for jury expenses this year.

Ms. Sweeney stated that the second area of concern to the clerks of court, in the Code, involves the language limiting State assumption of civil jury expenses to only counties that had civil jury trials in 1998 or 1999 fiscal years. She stressed that half of the counties in Montana did not have civil jury trials in this time period. She stated, as an example, that the clerk in Ekalaka conservatively estimated jury costs for 2003 will be \$31,000. **Ms. Sweeney** stated that Carter County must provide a forum for jury trials. She stated that current law requires that citizens of the least populated counties, counties with the lowest tax base, must provide their own funding for jury trials.

{Tape: 1; Side: A; Approx. Time Counter: 25 - 106}

Mary Fippin, Montana Association of Clerks of District Court, supported HB 489. She read from a letter written by Carole Carey, Carter County Clerk of District Court which is marked as exhibit 1.

EXHIBIT (juh26a01)

{Tape: 1; Side: A; Approx. Time Counter: 126 - 152}

Gordon Morris, Director, Montana Association of Counties,
supported HB 489.

Opponents' Testimony: None

Informational Testimony:

Chief Justice Karla Gray stated she spoke as an informational witness on HB 489. She agreed with the proponents that the language of SB 176, from last session, provided clear inequities and inequalities. She asked the Committee to change the effective date to July 1, 2003. She explained that the end of the fiscal year is near and there is not enough actual State money. She explained that what happened with the current law is clearly unfair to the counties.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LEHMAN closed on HB 489 stating that it is clear from the testimony that the playing field for the 27 counties needs to be leveled.

HEARING ON HB 496

Sponsor: **ARLENE BECKER, HD 18, Billings**

Opening Statement by Sponsor:

REP. BECKER opened on HB 496 stating that it would allow a person who has a protective order in another state to have it enforced in Montana. She explained that the bill would add protective orders for sexual assault and stalking.

Judy Wang, Assistant City Attorney, supported HB 496. She stated that she has prosecuted domestic and stalking cases for the past 16 years. She explained that HB 496 would help fix the problem with the current legislation. She explained that new language is needed to ensure that an Order of Protection is in effect as soon as possible.

EXHIBIT (juh26a02)

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported HB 496. She felt that this bill would increase safety for victims of sexual assault and stalking.

{Tape: 1; Side: A; Approx. Time Counter: 153 - 438}

Allie Bovington, Assistant Attorney General, Department of Justice, supported HB 496, for all the reasons which Ms. Wang gave.

Jim Smith, Montana County Attorney's Association, supported HB 496, stating that this is a good bill which would provide protection for victims.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. FACEY asked about the time. **Ms. Wang** stated that the hearing must be conducted within 20 days, and up to 45 days in district court.

Closing by Sponsor:

REP. BECKER closed on HB 496. She stated there needs to be an amendment to ensure the order would be effective immediately.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 14}

HEARING ON HB 480

Sponsor: **REP. DONALD STEINBEISSER, HD 100, Sidney**

Opening Statement by Sponsor:

REP. STEINBEISSER opened on HB 480 stating that it would increase penalties for certain violations regarding motor vehicle accidents.

{Tape: 1; Side: B; Approx. Time Counter: 14 - 58}

Proponents' Testimony:

David Halverson, Helena, supported HB 480. He stated that he is a car salesman and Sunday school teacher. He explained that

someone hit his car, took off, and cost him \$1,533 in damages. He stated that if the same person stole \$1,533 in items from his car, that would be a felony. He stressed that under the current law, it would only be a ten dollar fine. He urged the Committee to increase the fines.

{Tape: 1; Side: B; Approx. Time Counter: 59 - 150}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. STEINBEISSER closed on HB 480. He asked the Committee to increase the fines to \$200 for a first offense, \$300 for a second offense, and \$500 and/or six months for a third offense. He urged a do pass.

{Tape: 1; Side: B; Approx. Time Counter: 151 - 161}

EXECUTIVE ACTION ON HB 448

Motion: **REP. FACEY** moved that HB 448 DO PASS.

Discussion:

The Committee discussed irritating phone calls at home and whether this bill would address them. Committee discussed ensuring that the bill does not infringe on areas of legitimate free speech.

{Tape: 1; Side: B; Approx. Time Counter: 162 - 217}

Motion/Vote: **REP. LASZLOFFY** moved that HB 448 BE AMENDED (Laszloffy amendment to leave penalties the same). Motion carried unanimously.

Motion: **REP. SALES** moved that HB 448 DO PASS AS AMENDED.

Substitute Motion: **REP. SALES** moved that HB 448 BE FURTHER AMENDED (Sales amendment).

Discussion:

REPS. PARKER, HARRIS, GUTSCHE and **FACEY** discussed the meaning of "profane" and whether it would violate the constitutional right

of free speech to restrict it. **REP. GUTSCHE** read the dictionary definition of profane, "treat with irreverence, not concerned with religion, serving to debase what is holy." **REP. NEWMAN** stated that the word "profane" is used throughout the criminal code.

Vote: Substitute Motion that HB 448 BE AMENDED (Sales amendment) carried 12-3 by voice vote with CLARK, GUTSCHE, and HARRIS voting no.

Motion: REP. SALES moved that HB 448 DO PASS AS AMENDED.

Substitute Motion: REP. LASZLOFFY moved that HB 448 BE AMENDED.

Discussion:

REP. LASZLOFFY stated that it does not need to be as broad as the Oakland Raiders football team and could be as narrow as two or three people being defamed. **REP. NEWMAN** stated that the comments about the Oakland Raiders would not be defamation as they are in the public arena. He stated it is like saying the high school football coach is a moron. He explained that this, too, would not be defamation because it would be in the public arena. He stated he would vote for any amendments which would restore the law to its original defamation form.

Vote: Substitute Motion HB 448 BE AMENDED (Laszloffy amendment restoring defamation to original form) carried 14-2, by voice vote, with GALLUS and HARRIS voting no.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 202}

Motion: REP. FACEY moved that HB 448 DO PASS AS AMENDED.

Substitute Motion: REP. FACEY moved that HB 448 BE AMENDED (Facey Amendment to strike Section one from the bill.)

Discussion:

REP. NOENNIG stated he would agree with REP. FACEY'S amendment to strike Section one of the bill. **REP. FACEY** stated his amendment would also include having John McMaster changing the title.

Vote: Motion that HB 448 BE AMENDED (Facey amendment) carried unanimously, by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 203 - 250}

Motion: REP. FACEY moved that HB 448 DO PASS AS AMENDED.

Vote: Motion that HB 448 DO PASS AS AMENDED carried 16-1, by voice vote, with REP. SHOCKLEY voting no.

EXECUTIVE ACTION ON HB 289

Motion: REP. GALLUS moved that HB 289 DO PASS.

Motion: REP. NEWMAN moved that HB 289 BE AMENDED (Newman amendment to strike Section 4-7.)

Discussion:

REP. NEWMAN explained that there are potential constitutional concerns with leaving Sections 4 through 7, and he would therefore make a motion to remove them. He was concerned with questions Ms. Holton brought up at the hearing regarding criminalizing the BAC refusal. She emphasized that this would violate the due process clause of the Montana State and Federal Constitutions. He explained that the U.S. Supreme Court has ruled that BAC, horizontal gaze nystagmus, and other field tests are not considered testimonial, thus the Fifth Amendment is not implicated.

REP. LASZLOFFY asked about gathering evidence without a search warrant. CHAIRMAN SHOCKLEY responded that he read Neville v. South Dakota. He explained that South Dakota law, like Montana, says that if you refuse to blow, you lose your license. He explained that Mr. Neville refused to blow and lost his license. At the trial, the prosecution used his refusal to blow as evidence of intoxication. The U.S. Supreme Court stated that was okay, citing Shurber v. California. He stated the law does not allow the prosecution to use a person's refusal to be used as evidence of guilt when it would violate the Fifth Amendment under Miranda. In Shurber, the Court stated that taking blood is a Fourth Amendment search and you need a warrant. CHAIRMAN SHOCKLEY stated that federal case law states that if you refuse to blow, the jury can be told about it, however, the law does not state that you can criminalize a refusal to blow. REP. NEWMAN asked to get back on the amendment.

Vote: Motion that HB 289 BE AMENDED (Newman Amendment) carried unanimously by voice vote.

Motion: REP. NEWMAN moved that HB 289 DO PASS AS AMENDED.

Discussion:

REP. NEWMAN stated that the courts have ruled that breath, blood and urine are physical evidence and not items of testimony thus not Fifth Amendment concern. He explained that the Committee needs to look at Fourth Amendment concerns. He asked the Committee to look at what they are doing regarding public policy and DUI legislation. **REP. RICE** stated that the refusal to blow should not be criminalized and she opposed the bill. **REP. NOENNIG** stated he is troubled by the bill and the privacy issues. The Committee discussed the per se statute. **REP. NEWMAN** commented that the Montana Supreme Court stated that the per se statute is a "mere presumption of driving under the influence." **CHAIRMAN SHOCKLEY** stated that the per se statute began 30 years ago as a point of intoxication. He explained that the prosecution can convict a person without a BAC test through field sobriety tests, as well as overt signs of intoxication, but that they are more difficult. **REP. PARKER** felt that this is a good bill and he would support it. **REP. CLARK** stated he had a problem with the bill stating that the country is involved in a mania to increase police powers. However, he stated that he worries should his kid be on the road with a drunk driver. **REPS. HARRIS** and **FACEY** stressed that driving is a privilege. **REPS. FACEY, GUTSCHE, SHOCKLEY,** and **NOENNIG** discussed the refusal to blow on **REP. MAHLUM'S** bill, SB 37. **REP. NEWMAN** stated that per se means a BAC of .10 or greater but that we are moving toward a .08 per se BAC.

{Tape: 2; Side: A; Approx. Time Counter: 261 - 501}

{Tape: 2; Side: B; Approx. Time Counter: 1 - 42}

REP. NEWMAN asked the Committee to not make the police officer's jobs harder. **REP. HARRIS** stated without this bill, we just do a lot of paperwork without cracking down on drunk driving. **REP. RICE** stated that the law as it stands punishes and penalizes a refusal to blow. She stated a person who refuses to blow will lose their license and their insurance will most likely be affected. **REP. HARRIS** stated that the folks they are concerned with do not care about the punitive measures and that they will be on the road without insurance or a license to drive.

CHAIRMAN SHOCKLEY stated that this bill would not pass constitutional muster at the federal level, and that the Montana Constitution has even greater Fourth Amendment protections. He explained that the reason people are refusing to blow is because the hit is so much harder and stays with a person for the rest of

their lives. **CHAIRMAN SHOCKLEY** stressed that Fourth Amendment rights are more important to him than safety. He stated that hundreds of thousands of Americans have died protecting our rights. He felt it is sad that people die on our highways by drunks but that we must protect the rights which so many Americans have fought and died for. **REP. MALCOLM** stated that it is important to keep Fourth Amendment rights.

{Tape: 2; Side: B; Approx. Time Counter: 43 - 331}

Vote: Motion HB 289 DO PASS AS AMENDED failed 8-10, by roll call vote, with REPS. FACEY, GALLUS, HARRIS, NEWMAN, PARKER, RASER, STOKER, and THOMAS voting aye.

Motion/Vote: REP. GALLUS moved that HB 289 BE TABLED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 480

Motion: REP. SHOCKLEY moved that HB 480 DO PASS.

Discussion:

The Committee discussed the penalties for leaving the scene of an accident and differing scenarios in which a person may leave the scene legitimately. **John MacMaster** stated that you have a duty to stay at the scene of an accident and that includes a reasonable duty to get someone to the hospital. **REP. PARKER** felt the penalties in the bill of six months and/or \$500 was a bit steep.

Motion/Vote: REP. SHOCKLEY moved that HB 480 BE AMENDED (Shockley amendment to lower penalty to \$500 and/or 30 days.) Motion carried unanimously, by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 480 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 261}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh26aad)